

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-6576

LEVON SPAULDING,

Petitioner - Appellant,

versus

CHARLES HILL,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (CA-95-395-5-BO)

Submitted: June 20, 1996

Decided: July 9, 1996

Before HALL, WILKINS, and HAMILTON, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Levon Spaulding, Appellant Pro Se. Rebecca Kendrick Cleveland, Assistant Attorney General, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Appellant appeals the district court's dismissal without prejudice of his 28 U.S.C. § 2254 (1988) petition for failure to exhaust state remedies. Generally, dismissals without prejudice are not appealable, unless no amendment to the complaint could cure the defects in the plaintiff's case. Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993). We find that Appellant may be able to save this action through amendment.

The district court dismissed Appellant's petition because it contained exhausted and unexhausted claims. See Rose v. Lundy, 455 U.S. 509, 519 (1982). Appellant may either exhaust all the claims in the petition and then refile his petition, or he may amend his petition by deleting any unexhausted claims and resubmitting the amended petition to the district court. Id. Thus, while the district court order here might be read to allow resubmission only after exhaustion, it appears that the order merely did not enumerate specifically all of Appellant's options. Because the order which Appellant seeks to appeal is not an appealable final order, we dismiss this portion of the appeal. See Domino Sugar Corp., 10 F.3d at 1066-67.

Appellant also appeals from the district court's order denying what he styled as a Fed. R. Civ. P. 60(b) motion. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm the denial of this motion on the reasoning of the district court. Spaulding v. Hill, No. CA-95-395-5-BO

(E.D.N.C. Apr. 1, 1996). We deny Appellant's motions for appointment of counsel and for default judgment and dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART; DISMISSED IN PART